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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/2236& 3616/2005 - EX[DB] Date **01/12/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S BIRLA CORPORATION
SATNA CEMENT WORKS P.O.BIRLA VIKAS SATNA
485005

M/S BIRLA CORPORATION Appellant

Vs

C.C.E BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 991-992/2011 **EX[DB]** dated 15.11.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E BHOPAL
HOSHANGABAD ROAD, 48,
ADMINISTRATIVE AREA, AREA
HILLS, BHOPAL (M.P.) 462011

12-12-11

2. Adv. / Consult
MR.RATHORE & GROVER
LAW OFFICES, E-500, GREATER KAILASH-II NEW DELHI-110048,
PHONE//FAX:41638382

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32. New Rohtak Road. New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

14. M/S MAIHAR CEMENT LTD.
SARLANAGAR, MAIHAR,
DIST. SATNA-485772

IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 2236 & 3816 of 2005-Ex

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : No
3. Whether Their Lordships wish to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental authorities? : Yes.

Excise Appeal No. 2236 of 2005-Ex

[Arising out of Order-in-Appeal No. 506/CE/BPL/2004 dated 31.3.2005 passed by the Commissioner, Customs & Central Excise (Appeals), Bhopal]

M/s. Birla Corporation Ltd. — Appellants

Vs.

Commissioner of Central Excise
Bhopal — Respondent

Excise Appeal No. 3816 of 2005-Ex

[Arising out of Order-in-Appeal No. 57/CE/BPL/2004 dated 13.9.2005 passed by the Commissioner, Customs & Central Excise (Appeals), Bhopal]

M/s. Maihar Cement — Appellants

Vs.

Commissioner of Central Excise Bhopal — Respondent

Appearance:

Shri Sanjay Grover, Advocate for the Appellants
Shri Sunil Kumar, SDR for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

Date of Hearing/decision : 15.11.2011

FINAL **ORAL ORDER NO. 991 & 992 / 2011 EX**

Per Archna Wadhwa (for the Bench):

After hearing both sides, we find that the short issue involved in the present appeal is as to whether the appellants are entitled to the benefit of Cenvat credit in respect of welding electrodes for repair and maintenance of plant and machinery. We find that the issue is no more res integra and stands settled in favour of assessee by various decisions of High Courts in the following cases:

1. Ambuja Cements Eastern Ltd. vs. CCE, Raipur
2010 (256) ELT 690 (Chhattisgarh)

2. Hindustan Zinc vs. Union of India
2008 (228) ELT 517 (Raj.)

3. CCE, Bangalore-I vs. Alfred Herbert (India) Ltd.
2010 (257) ELT 29 (Kar.)

3. Reference is made to the latest decision in the case of Nangganj Sihori Sugar Co.Ltd. vs. CCE, Lucknow vide order dated 435/2011-SM dt.14.7.11 wherein identical submissions made by both sides and the Tribunal observed as under:-

"Learned DR, on the other hand, relied upon the judgement of Division Bench of the Tribunal in the case of Vikram Cement vs. CCE, Indore reported in [2009 (242) ELT 545 (Tri-Del)] and judgement of Apex Court in the case of Ramala Sahkari Chini Mills Ltd. vs. CCE, Meerut I reported in [2010 (260) ELT 321 (SC)].

I have considered the submissions made by both sides and perused the records. I find that orders of the adjudicating authority as well as from the submissions of the learned counsel that the issue involved in this case and the disputed fact is whether duty paid on welding electrodes are used in the factory of appellant for repair and maintenance of plant and machinery is eligible for Cenvat credit. I find that judgements cited by the learned Counsel of Hon'ble High Courts of Chhattisgarh, Rajasthan and Karnataka are directly on the point, wherein it is held that Cenvat credit can be availed on welding electrodes which are used for maintenance of plant and machinery. These judgements are binding on me.

As regards the decision of the Division Bench cited by the learned DR in the case of Vikram Cement, since judgements of the High Court are of higher judicial fera, hence have more binding force. As regards the Ramala Sahkari Chini Mills (supra), I find that this matter is referred to the Larger Bench of the Hon'ble Supreme Court , this would indicate that at this *juncture the judgement of the Hon'ble High Court as referred to hereinabove are binding on me and respectfully following the same, the impugned order is liable to be set aside. The impugned order is set aside."*

4. Inasmuch the issue is decided by following the ratio of the above decision, we set aside the impugned orders and allow both the appeals with consequential relief to the parties.

(Pronounced in the open Court)

(Archana Wadhwa)
Member (Judicial)

(MATHEW JOHN)
MEMBER (TECHNICAL)

ss

TELEGRAM : CEGCANAL REGISTERED / AD

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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

(Principal Bench)

West Block No.2, R.K. Puram, New Delhi-110066

EXCISE APPEAL BRANCH

Date :25/04/2012

MISC Order No. MO/417/2012- EX[DB]

Application E/ROM/19/2012 - EX In

Appeal No. E/2236/2005 - EX[DB]

1. Appellant
   M/S BIRLA CORPORATION
   SATNA CEMENT WORKS P.O.BIRLA VIKAS SATNA

   485005
2. Respondent
   C.C.E BHOPAL
   HOSHANGABAD ROAD, 48, ADMINISTRATIVE AREA,
   AREA HILLS, BHOPAL (M.P.) 462011
3. Adv / Consult :
   MR.RATHORE & GROVER
   LAW OFFICES, E-500, GREATER KAILASH-II NEW DELHI-
   110048, PHONE//FAX:41638382
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13. Office Copy
14. Guard File
15. Second Folder

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise ROM Application No. 19 of 2012
Excise Appeal No. 2236 of 2005

M/s. Birla Corporation — Appellants

Vs.

Commissioner of Central Excise Bhopal — Respondent

Appearance:
Shri Sanjay Grover, Advocate for the Appellants
Shri Sanjay Jain, DR for the Respondent

CORAM:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

Date of Hearing/decision : 11.4.2012

MISC **ORAL ORDER NO. 417/2012 – Ex (BR)**

Per Archana Wadhwa (for the Bench):

The present ROM stands filed in respect of order No. 991-992/11 Ex dated 15.11.11 and contention of the learned advocate appearing for the appellant is that the dispute involved was in respect of modvat credit availability for three items i.e. welding electrodes, dissolved acetylene gas and oxygen gas used for repair and maintenance of machinery. Tribunal had held that such use for repair and maintenance of plant and machinery is admissible for the purpose of modvat credit. However, the mistake being pointed out by him is to the effect that whereas welding electrodes stands specifically mentioned in the order, there is no reference about the dissolved acetylene gas and oxygen gas . As such, he submits that such mistake be rectified.

2. We have also heard learned AR appearing for the revenue. On going through the order, we find that there is mistake apparent on record inasmuch as only welding electrodes were taken into consideration for the purpose of deciding the disputed issue and there is no mention of dissolved acetylene gas and oxygen gas. As such, we rectify the said mistake by introducing the following paragraphs in the order of the Tribunal.

> "5. As regards the availability of modvat credit on dissolved acetylene gas and oxygen gas we find that the Tribunal in the case of Hindustan Zinc Lt.d vs. CCE, Jaipur [2011 (272) ELT 393 (Tri-Del)] has held that the said gas used for repair and maintenance of plant and machinery are eligible inputs for the purpose of cenvat credit. By following the said decision, we hold that Dissolved acetylene gas and oxygen gas is admissible modvatable items. The demand raised in respect of said item is also set aside."

3. ROM application is allowed in the above terms.

(Pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

ss